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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,049	04/10/2004	Ronald John Rosenberger		2242

7590 02/05/2008
Ronald Rosenberger
506 Sterling St.
Newtown, PA 18940

EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 02/05/2008

Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 10/822,049	Applicant(s) ROSENBERGER, RONALD JOHN	
	Examiner Steven D. Maki	Art Unit 1791	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 15 November 2007 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☒ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☒ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☒ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☒ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☒ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See PTO 892 and Attachment to Notification of Non-Compliant Appeal Brief.

Attachment to Notification of Non-Compliant Appeal Brief

In the letter dated 11-15-07, appellant requests reconsideration to remand application in view of examiner's (1) making new grounds of rejection under final office action, (2) failure to remove non-final status of office action with new grounds of rejection and (3) failure to enter amendment in response to new grounds of rejection. In response to these requests, examiner directs appellant's attention to MPEP 706.07(c), which states: "Any question as to prematureness of a final rejection should be raised, if at all, while the application is still pending before the primary examiner. This is purely a question of practice, wholly distinct from the tenability of the rejection. It may therefore not be advanced as a ground for appeal, or made the basis of complaint before the Board of Patent Appeals and Interferences. It is reviewable by petition under 37 CFR 1.181. See MPEP 1002.02(c)." (page 700-85, Rev. 6, Sept. 2007, emphasis added). No timely petition under 37 CFR 1.181 has been received. Also, appellant's attention is also directed to (A) MPEP 706.07(a) which permits an office action containing a new ground of rejection to be made final if the new ground of rejection was necessitated by amendment, (B) examiner's remarks in advisory actions dated 1-4-07 and 3-6-07, (C) MPEP 714.13 which states: "It should be kept in mind that applicant cannot, as a matter of right, amend any finally rejected claims, add new claims after final rejection (see CFR 1.116) or reinstate previously canceled claims" and (D) MPEP 706.07(h) which states: "If an applicant timely files an RCE with the fee set forth in 37 CFR 1.17(e) and a submission that meets the reply requirements of 37 CFR 1.111, the Office will withdraw the finality of any Office Action to which a reply is outstanding and

the submission will be entered and considered" wherein "A 'submission' as used in 37 CFR 1.14 includes, but is not limited to, an information disclosure statement, an amendment to the written description, claims, or drawings, new arguments, or new evidence in support of patentability."

In the letter dated 11-15-07, appellant also requests reconsideration to remand application in view of examiner's (4) failure to allow entry of response to new grounds of rejection on appeal. This issue is moot because (A) examiner has considered appellant's arguments in the after final amendment filed 12-6-08 and (B) upon reconsideration, examiner agrees that appellant's arguments in the Brief filed 11-15-07 satisfies MPEP 1205.02. With respect examiner's consideration of appellant's arguments, see Advisory Action dated 1-4-07. On page 5 of the Advisory Action dated 1-4-07, for example, examiner stated "Applicant argues that Great Britain 584 fails to teach an *added* scent or fragrance *compound* and directs attention to the disclosure which describes incorporating novelty scent or fragrance in rubber compound(s). This argument is not commensurate in scope with the claims and is therefore not persuasive since none of the claims require a composition comprising two compounds wherein one compound is a scent or fragrance compound and the other compound is a rubber compound(s)." (emphasis in original). Although the Brief filed 11-15-07 contains arguments, appellant is reminded that arguments should be commensurate in scope with the claims on appeal, which appellant acknowledges as being "... the claims ... in the form they were amended and canceled in the Amendment and Response filed June 14, 2006 to the Office action of March 14, 2006" (page 3 of Brief filed 11-15-07).

In the letter dated 11-15-07, appellant also requests reconsideration to remand application in view of examiner's (5) asserting that failure to allow entry of response to new grounds of rejection on appeal constitutes appellant's admission of unpatentability of appealed claims. This issue is moot because examiner accepts and agrees with appellant that appellant has not admitted unpatentability of the appealed claims.

However, appellant is reminded that arguments should be commensurate in scope with the claims on appeal, which appellant acknowledges as being "... the claims ... in the form they were amended and canceled in the Amendment and Response filed June 14, 2006 to the Office action of March 14, 2006" (page 3 of Brief filed 11-15-07).

The Appeal Brief filed 11-15-07 does not include a statement of the status of all of the claims. The status of claims 18-20 is not identified. In order to be complaint, the Brief must identify the status of claims 18-20.

The Appeal Brief filed 11-15-07 does not include a statement of the status each amendment filed subsequent to final rejection. In particular, the Brief does not include a statement of the status of the after final amendment filed 2-8-07. In order to be compliant, the Brief must identify the status of the after final amendment filed 2-8-07.

The Appeal Brief filed 11-15-07 does not include a concise statement of each ground of rejection presented for review. On page 4 of the Brief, the statements of grounds 1, 4, 5 and 7 are incorrect and disagree with the grounds of rejection set forth in paragraphs 2, 7, 8 and 10 of the final rejection dated 9-8-06. Appellant's statement of the grounds of rejection on page 5 of the Brief filed 11-15-07 raises confusion as which references are applied against which claims. Since appellant's statements of the

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grounds of rejection 1, 4, 5 and 7 incorrectly describe the grounds of rejection authored by the examiner, the Brief filed 11-15-07 fails to include the required concise statement of each ground of rejection presented for review. In order to be complaint, the Brief must correctly describe the grounds of rejection set forth in the final office action dated 9-8-06. Examiner suggests using the headings of the rejection in paragraphs 2, 7, 8 and 10 of the final rejection dated 9-8-06 for the concise statement of each ground of rejection.

The Appeal Brief filed 11-15-07 does not include a correct copy of the claims involved in the appeal. For example, the copy of claim 2 on page 12 of the Brief omits "at least one pheromone". Since the copy of claim 2 is incorrect, the Brief filed 11-17-07 fails to include the required correct copy of the claims involved in the appeal. In order to be complaint, the copy of claim 2 must include "at least one pheromone".

It is also noted that item 2 on page 5 of the Brief filed 11-15-07 is an objection instead of a rejection and is therefore not an appealable issue.

The attached PTO 892 provides translations for Japan 2002-114873, German 2,949,356, French 2,800,013, and Japan 11-151,908.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven D. Maki whose telephone number is (571) 272-1221. The examiner can normally be reached on Mon. - Fri. 8:30 AM - 5:00 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on (571) 272-1226. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Steven D. Maki
February 4, 2008


STEVEN D. MAKI 2-4-08
PRIMARY EXAMINER